

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MERCHANTS MUTUAL INSURANCE
COMPANY,

Plaintiff,

v.

215 14th St., LLC,

and

Adithya Bathena,

Defendants.

CIVIL ACTION

DOCKET NO.:

**COMPLAINT FOR DECLARATORY
RELIEF**

Plaintiff, Merchants Mutual Insurance Company (Merchants) in support of its request for declaratory relief avers as follows:

COMPLAINT

1. This Declaratory Judgment action arises out of a claim submitted to Merchants by Defendant, 215 14th Street, LLC (Claimant). The subject building is located at 215 14th Street, Jersey City, New Jersey. On December 12, 2018, the Claimant's public adjuster, Andrew Knox, reported to Merchants that on or about December 3, 2018, the building had "begun to collapse."

2. Merchants promptly investigated the incident. At Merchants' request, a structural engineer, Russel E. Daniels inspected the building on two occasions - December 28, 2018 and again on February 19, 2019. Mr. Daniels reported that long-term corrosion and deterioration of a number of the steel support columns in the rear of the building caused a shortening and buckling of some of the columns.

3. The incident does not constitute a collapse or other covered event under the policy issued by Merchants to the Claimant.

PARTIES

4. Plaintiff, Merchants, is an insurance company duly authorized to do business in New Jersey, with a principal place of business at 250 Main Street, Buffalo, New York 14240.

5. Upon information and belief, 215 14th Street, LLC is a business entity with a principal place of business at 12 Perrine Road, Monmouth Junction, New Jersey 08852.

6. Adithya Bathena is a nominal Defendant, named in the event he is determined to be an indispensable or necessary party. Upon information and belief, Adithya Bathena is an individual residing in Holmdel, New Jersey and has an interest in 215 14th St., LLC.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 in that complete diversity of citizenship exists between the Plaintiff and the Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Venue of this action is proper in this Court pursuant to 28 U.S.C. § 1391(b), because this is the judicial district in which a substantial part of the events giving rise to this action occurred.

FACTUAL BACKGROUND

8. On December 12, 2018, the Claimant, through its public adjuster, Andrew Knox, reported a loss that allegedly occurred on December 3, 2018. The Claimant's public adjuster described the loss as a "building about to collapse."

9. On December 28, 2018, a structural engineer, Russel Daniels, retained by Merchants and representatives of the Claimant inspected the loss site.

10. A second inspection was conducted on February 19, 2019 by which time some of the asphalt and other materials around the base of the support columns at the rear of the building

had been removed. The removal of these materials revealed significant rust, corrosion, deterioration and wear at the base of a number of columns in the rear of the building.

11. A representative of the Claimant was present at this second inspection as well.

12. Mr. Daniels found that long-term corrosion, rust, deterioration and wear had resulted in the shortening and buckling of a number of the support columns. The building at all times has remained standing.

13. Having investigated the site and having found that a covered loss did not occur, Merchants issued a denial letter to the insured. The denial letter is attached as Exhibit "A."

MERCHANTS' INSURANCE POLICY

14. Merchants issued policy No.: BOPI089302 to 215 14th Street, LLC, which policy was effective from March 1, 2018 to March 1, 2019. A copy of the Policy is attached as Exhibit "B."

15. The Policy contains the following relevant provisions:

SECTION I – PROPERTY

A. Coverage

We will pay for direct physical loss of damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property includes Buildings as described under Paragraph **a.** below, Business Personal Property as described under Paragraph **b.** below, or both, depending on whether a :Limit of Insurance is shown on the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under Paragraph **2.** Property Not Covered.

2. Property Not Covered

Covered Property does not include:

- d.** Land (including land on which the property is located), water, growing crops or lawns;

3. Covered Causes Of Loss

Risks of direct physical loss unless the loss is:

- a.** Excluded in Paragraph **B.** Exclusions in Section **I**; or
- b.** Limited in Paragraph **4.** Limitations in Section **I**.

5. Additional Coverages

d. Collapse

The coverage provided under this additional Coverage – Collapse applies only to an abrupt collapse as described and limited in Paragraphs **d.(1)** through **d.(7)**.

- (1)** For the purpose of this Additional Coverage – Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
- (2)** We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this policy or that contains Covered Property insured under this policy, if such collapse is caused by one or more of the following:
 - (a)** Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;

- (b) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
 - (c) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation;
 - (d) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (i) A cause of loss listed in Paragraph (2)(a) or (2)(b):
 - (ii) One or more of the “specified causes of loss”;
 - (iii) Breakage of building glass;
 - (iv) Weight of people or personal property; or
 - (v) Weight of rain that collects on a roof.
- (3) This Additional Coverage – Collapse does **not** apply to:
 - (a) A building or any part of a building that is in danger of falling down or caving in;
 - (b) A part of a building that is standing, even if it has separated from another part of the building; or
 - (c) A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

i. Collapse

- (1) Collapse, including any of the following conditions of property or any part of the property:
 - (a) An abrupt falling down or caving in;
 - (b) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
 - (c) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to Paragraph **i.(1)(a) or i.(1)(b)**.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

- (2) This Exclusion **i.**, does not apply:
 - (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or
 - (b) To collapse caused by one or more of the following:
 - (i) The “specified causes of loss”;
 - (ii) Breakage of building glass;

- (iii) Weight of rain that collects on a roof; or
- (iv) Weight of people or personal property.

I. Other Types of Loss

- (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

- (4) Settling, cracking, shrinking or expansion;

But if an excluded cause of loss that is listed in Paragraphs (1) through (7) above results in a “specified cause of loss” or building glass breakage, we will pay for the loss or damage caused by that “specified cause of loss” or building glass breakage.

- 3. We will not pay for loss or damage caused by or resulting from any of the following Paragraphs **a.** through **c.** But if an excluded cause of loss that is listed in Paragraphs **a.** through **c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

c. Negligent Work

Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;

- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

H. Property Definitions

- 12. “Specified causes of loss” means the following:
Fire; lightening; explosion; windstorm or hail;
smoke; aircraft or vehicles; riot or civil commotion;
vandalism; leakage from fire extinguishing
equipment; sinkhole collapse; volcanic action;
falling objects; weight of snow, ice or sleet; water
damage.

- 16. No abrupt collapse as described in the insurance policy has occurred.
- 17. The subject building is still standing.

COUNT I

DECLARATORY RELIEF

18. Merchants incorporates all preceding paragraphs of this Declaratory Judgement Complaint as if fully set forth herein.

19. Merchants has no duty to pay for and/or reimburse the Claimant for any expenses or damages arising from the incident that allegedly occurred on December 3, 2018.

20. The incident of December 3, 2018 did not constitute an abrupt collapse as described the insurance policy issued by Merchants.

21. The subject building is still standing and therefore, no coverage for collapse applies under the policy issued by Merchants.

22. The condition of the subject building is caused by wear and tear, rust, corrosion, deterioration and/or shrinking and therefore, no coverage is provided under the policy issued by Merchants.

WHEREFORE, Merchants Mutual Insurance Company respectfully requests that the Court enter an Order making the following declarations:

1. Merchants Mutual Insurance Company is not obligated to pay or reimburse 215 14th Street, LLC or Adithya Bathena for any damages in connection with the events that allegedly occurred on or about December 3, 2018 at 215 14th Street, Jersey City, New Jersey.

2. An insured collapse as described by the subject Policy has not occurred in the circumstances of this claim.

3. No coverage applies under the Policy issued by Merchants for property damage and/or business interruption and/or extra expense in connection with the events that allegedly occurred on or about December 3, 2018 at 215 14th Street, Jersey City, New Jersey.

SWEENEY & SHEEHAN

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